

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

**FRANK MUCERINO III and
CREEKSIDE TERRACE LLC,**

Plaintiffs,

v.

CHARLES JOSHUA DALE MARTIN,

Defendant.

Case No. 3:21-cv-00284

DEFENDANT MARTIN'S RULE 12(b)(1) MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(1), Defendant moves this Court to dismiss Plaintiffs' Complaint for lack of subject matter jurisdiction. The Court, sitting in diversity, should dismiss this action because there was not complete diversity between the parties when Plaintiffs filed their Complaint on April 7, 2021.

In support of this Motion, Defendant relies on his contemporaneously filed Memorandum of Law; the Tennessee Secretary of State filings for Plaintiff Creekside Terrace, LLC and Better Built Homes, LLC (**Exhibit A**); the June 7, 2021, deposition of Plaintiff Mucerino (**Exhibit B**); Plaintiff Mucerino's Contract License Verification from the Tennessee Department of Commerce and Insurance (**Exhibit C**); and the June 7, 2021, deposition of Stephanie Mucerino (**Exhibit D**).

For these reasons, Defendant moves the Court to grant his Rule 12(b)(1) Motion and to dismiss the Plaintiffs' Complaint with prejudice.

Respectfully submitted,

/s/ John P. Nefflen

John P. Nefflen, TN BPR No. 20226
Rebekah L. Shulman, TN BPR No. 27357
Shackelford, Bowen, McKinley &
Norton LLP
1 Music Cir. S., Ste. 300
Nashville, TN 37203
Telephone: (615) 256-7200
Facsimile: (615) 329-4485
jnefflen@shackelford.law
rshulman@shackelford.law

*Attorneys for Defendant Charles Joshua Dale
Martin*

CERTIFICATE OF SERVICE

I certify that on July 12, 2021, the foregoing *DEFENDANT MARTIN'S RULE 12(b)(1) MOITON TO DIMISS* was filed electronically with this Court and served by operation of the Court's Case Management / Electronic Case Filing System on:

Eugene N. Bulso, Jr.
BULSO, PLC
155 Franklin Road, Ste. 400
Brentwood, TN 37027
gbulso@bulso.com

/s/ John P. Nefflen

John P. Nefflen